

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**DATE:** March 6, 2013

**LEONARD DAVIS**  
**Judge Presiding**

Court Reporters: Shea Sloan  
Judy Werlinger

Law Clerk: Gabrielle LaHatte

Court Administrator: Rosa L Ferguson

<b>VIRNETX INC.</b>  <b>V</b>  <b>CISCO SYSTEMS, INC.</b>	<b>CIVIL ACTION NO: 6:10-CV-417</b> <b>JURY TRIAL – DAY 3</b>
<b>ATTORNEYS FOR PLAINTIFF</b>	<b>ATTORNEYS FOR DEFENDANTS</b>
<b>SEE SIGN-IN SHEETS</b>	

On this day, came the parties by their attorneys and the following proceedings were had:

**OPEN:** 9:05 am

**ADJOURN:** 4:15 pm

<b>TIME:</b>	<b>MINUTES:</b>
9:05 am	<b>Hearing outside the presence of the Jury:</b> Mr. Cassady addressed the Court regarding the scope of Dr. Jennings' testimony today. Mr. Jones responded and will ask the witness about patents and telephony, but not delve into telephony. Mr. Cassady further addressed the Court regarding USPTO relationship. Mr. Jones further responded. Mr. Cassady further argued on telephony. Objection is overruled.
	Court addressed the parties on a jury note received.
	<b>Jury seated in the courtroom.</b> Court security officer tendered the Court a note.
	<b>Dr. SCOTT NETTLES</b> on the witness stand. Direct examination of witness by Mr. Curry continued.
10:22 am	Court excused the Jury for break.
	Court addressed the parties on a Jury Note from seated Juror # 1. Court inquired of the parties regarding dismissing juror or take off Friday. Mr. Cawley responded and would like to have Friday off. Mr. Desmarais concurs. Court will tell the Jury that we will take Friday off.
10:25 am	Court in recess until 10:40 am.
10:40 am	<b>Jury seated in the courtroom.</b>
	Court addressed the Jury regarding lunch and scheduling and will not have Court on

TIME:	MINUTES:
	Friday. Court advised case may go through Wednesday.
	Court inquired of the parties if they have exhibits to offer.
	Mr. Cassady offered Plaintiff VirnetX's Pre-Admitted Trial Exhibit List for March 6, 2013, marked as <b>Plaintiff's Exhibit List 3</b> and moved to admit the Flip Chart as the next Demonstrative Exhibit. Court took up Plaintiff's List #3, and without objection, exhibits admitted. Plaintiff's Exhibits admitted: <b>Plaintiff's Exhibit 1 – 6, 10 – 12, 16 – 18, 19, 21 – 24, 27, 29, 30, 32, 34, 36, 37, 40, 41, 46, 49, 51 – 53, 55 – 58, 60, 61, 62, 64 – 67, 70, 73, 76, 83, 84, 89, 90 -92, 98, 99, 103, 107, 112, 121, 122, 124 – 129, 159, 165, 166, 174, 177, 186, 187, 191, 201, 213, 215 – 220, 223, 226 – 229, 234 – 244, 246, 257, 263, 266, 268, 269, 271, 274, 275, 278, 292, 295, 297, 302, 305, 308, 309, 312 – 317, 320 – 323, 326, 329, 344, 346 – 356, 359, 360, 364, 366, 367, 378, 380, 381, 383 – 385, 387, 392 – 395, 416 – 419, 425, 426, 430, 437, 438, 444, 451 – 454, 456 – 458, 460, 461, 472, 474 – 479, 485 – 489, 491, 501 – 504, 506, 510, 543, 545, 572, 574, 578, 586, 597, 599, 601, 602, 618, 625 – 627, 629 - 633, 641, 644, 648, 650, 654, 668, 669, 671, 714, 722, 727, 732, 733, 740, 747, 752, 753, 755, 756, 758 – 764, 767, 768, 778.</b>
	Mr. Stadnick offered Defendant's List of Admitted Exhibits, March 6, 2013, marked as <b>Defendant's Exhibit List 2</b> , and without objection, exhibits admitted. <b>Defendant's Admitted Exhibits: DX-J 53, J59, J69, J99, J101, J105, J106, J106A, J191, J192, J282, C1332, C1336, C1427, C1436, C1465 AND Plaintiff's Admitted Exhibits: 27, 32, 51, 52, 437, 438, 727.</b>
	Mr. Cassady offered Flip Chart and asked that it be marked as Plaintiff's Next Demonstrative and offered, and without objection <b>Plaintiff's "next" Demonstrative Exhibit admitted.</b>
	Cross Examination of Dr. Nettles by Mr. Desmarais.
	Mr. Curry asked to approach bench. Bench Conference held.
	Court instructed the Jury as to paid experts.
	Cross Examination of Dr. Nettles continued.
11:55 am	Court in recess until 12:35 pm.
12:35 pm	<b>Jury Not Present in the Courtroom.</b>
	Mr. Caldwell addressed the Court on the issue of anonymity and Mr. Desmarais' argument. Mr. Caldwell asked for a corrective instruction that Mr. Desmarais be not allowed to argue that the anonymity in the patents is limited to IP-hopping and argue that tunneling protocols do not ensure anonymity and requested to use verbatim quotes. Mr. Desmarais responded. Court will allow plaintiff to cross examine and the Court will not give an instruction.
	Mr. Bondor addressed the Court on renewal objection on Nash Bargaining Solution regarding Weinstein's testimony.
	Court asked for the Jury to be brought in.
	<b>Jury seated in the courtroom.</b>
	Cross Examination of Dr. Nettles by Mr. Desmarais continued. Mr. Desmarais asked Timeline be marked as <b>Defendant's Demonstrative C2005</b> . Cross examination continued.
	Mr. Desmarais passed the witness. Redirect examination of Dr. Nettles by Mr. Curry.
	Mr. Curry passed the witness. Mr. Desmarais offered <b>Defendant's Demonstrative C2004</b> , and without objection, exhibit admitted as demonstrative. Recross examination of Dr. Nettles by Mr. Desmarais.
	Mr. Desmarais passed the witness. Redirect examination of Dr. Nettles by Mr. Curry.

<b>TIME:</b>	<b>MINUTES:</b>
	Mr. Curry passed the witness. Recross examination of Dr. Nettles.
	Court asked Jury to pass down their question sheets.
1:33 pm	Court recessed Jury to review questions.
	<b>Jury not present in the courtroom.</b> Court addressed the parties and read Question 1 to the parties. No objections by the parties. Court read Question 2. Mr. Curry objects to Question 2. Mr. Desmarais responded. Court will exclude Question 2. Court read Question #3. Court and parties discussed. Court will limit the question. Court will read question #4. Mr. Curry Responded. Mr. Desmarais responded.
	Mr. Cawley asked for a moment to confer with co-counsel.
1:40 pm	Court asked for Jury. <b>Jury seated in the Courtroom.</b>
	Court read the Jury Questions to Dr. Nettles. Dr. Nettles responded.
	Mr. Cassady called <b>MIKE LACHUK</b> by video deposition. Times: 3:41 for Plaintiff and 4:19 for Defendant. Video played for the Jury.
	Mr. Cassady called <b>ROY WEINSTEIN</b> to the witness stand. Witness previously sworn.
	Direct examination of Mr. Weinstein by Mr. Cassady.
2:30 pm	Court in recess until 2:45 pm.
2:45 pm	Trial resumed. <b>Jury seated in the courtroom.</b>
	Direct examination of Mr. Weinstein continued.
	Mr. Cassady passed the witness. Cross examination of Mr. Weinstein by Mr. Bondor.
	Mr. Cassady asked to approach bench. (Bench Conference held)
	Cross examination of witness continued.
	Mr. Cassady asked to approach bench. (Bench Conference held)
	Cross examination of witness continued.
	Mr. Bondor passed the witness. Redirect examination of witness.
	Mr. Cassady passed the witness. Recross examination of witness.
	Mr. Bondor passed the witness.
	Court asked Jury to pass down their questions for this witness. No Jury Questions for this witness.
4:15 pm	Court addressed the Jury and will recess them until 9:00 am.
	<b>Jury not present in the courtroom.</b>
	Court gave parties their times. Plaintiff has used 8:32 and Defendant has used 4:16.
4:15 pm	There being nothing further, Court adjourned for the day.